

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SUSAN CHANELL ROSS,)
)
Plaintiff,)
)
vs.) Case No. 4:24-cv-00146-MTS
)
DR. MENAKA CHANDRA,)
)
Defendant.)

MEMORANDUM AND ORDER

Under Missouri law, in any action against a health care provider for damages related to personal injury from the rendering or failure to render health care services, a plaintiff must file an affidavit with the court. *See Mo. Rev. Stat. § 538.225.1.* This affidavit must state that the plaintiff has obtained a written opinion from a legally qualified health care provider, indicating that the defendant failed to use the care that a reasonably prudent and careful health care provider would have used under similar circumstances. *See id.* The affidavit must also state that this failure directly caused or contributed to the damages claimed by the plaintiff. *See id.*

This action is such an action. Defendant is a “health care provider.” Mo. Rev. Stat. § 538.205(6). And Plaintiff seeks damages against Defendant based on the services that Defendant rendered to Plaintiff in the ordinary course of Defendant’s profession. *See id.* § 538.205(7); *see also, e.g., Williams v. US Dep’t of Health & Hum. Servs.*, 4:21-cv-01049-MTS, 2022 WL 3541691, at *2 (E.D. Mo. Aug. 18, 2022) (claim against dentist for injury resulting from dental treatment). Despite this requirement, Plaintiff has not filed the

affidavit. Nor did she even indicate that she has obtained an opinion from a qualified health care provider. In fact, she altogether failed to address this issue in response to Defendant's Motion to Dismiss.

Because Plaintiff has failed to file the required affidavit, the Court must dismiss this action. Mo. Rev. Stat. § 538.225.6 ("If the plaintiff or his attorney fails to file such affidavit the court shall, upon motion of any party, dismiss the action against such moving party without prejudice."); *Moore v. Ernest-Jackson*, 16 F. App'x 517, 518 (8th Cir. 2001) (per curiam); *Keating v. Smith*, 492 F. App'x 707 (8th Cir. 2012) (per curiam); *see also, e.g.*, *Murphy v. Neill*, 4:23-cv-0012-BP, 2023 WL 11697092, at *4 (W.D. Mo. July 26, 2023).

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss, Doc. [16], is **GRANTED**.

An Order of Dismissal dismissing this action without prejudice will accompany this Memorandum and Order.

Dated this 16th day of September 2024.



MATTHEW T. SCHELP
UNITED STATES DISTRICT JUDGE